IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 312 of 1999

Reserved on: 13.8.2007

Date of decision: 21.9.2007

State of H.P. ... Appellant

Versus

Bhagat Singh & Ors. … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General, for the appellant.

For the respondent: Mr. Ajay Kochar with Mr. Amit Sharma, Advocates, for respondents No. 1,2 and 4 to 6.

V.K. Ahuja , J.:

This is an appeal filed by the appellant/State of H.P. against the judgment of acquittal passed by the Special Judge, Shimla, dated 22.3.1999 in Corruption Case No. 7-S/7 of 1997/1995. By the said judgment, the learned Special Judge acquitted respondents Hari Dass, Inder Sain, Joginder Singh, Som Parkash Kohli and Ashwani Kumar Sarna of the charge under Section 120-B read with Section 218 of the Indian Penal Code, Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Rules 18 & 20 of the H.P. Forest Produce Transit (Land Routes) Rules, 1978 and Section 218 I.P.C. read with Section 42 of the Indian Forest Act. Accused Bhagat Singh was acquitted of the charge framed

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

against him under Section 120-B read with Section 218,379 I.P.C., Section 13(1)(d) of the Prevention of Corruption Act and Rules 11(1) and 20 of the H.P. Forest Produce Transit (Land Routes) Rules read with Section 42 of the Indian Forest Act.

Briefly stated the facts of the case are that during the course of investigation of case F.I.R. No. 18 of 1984, of Enforcement Department of H.P., South Zone, Shimla, it came to light that against permit No. 25/82-83, dated 24.4.1982 issued by Divisional Forest Officer, Rohru, valid upto 31.5.1982, 128 scants of Deodar and Kail had been exported in excess of the number of scants permitted to be exported through the said permit. An inquiry was conducted and a case was registered vide F.R. No. 69 of 1985 and it was found that some residents of village Arhal had submitted applications to the Divisional Forest Officer for permission to fell trees standing on their private land which applications were allowed by the Divisional Forest Officer after seeking reports from Range Officer, Tikkar and after getting the land demarcated and trees marked thereafter from Block Officer. Accused Joginder Singh was the Range Officer at the relevant time who got the land demarcated from Shobha Ram, Field Kanungo and Shobha Ram had died during the pendency of the case. Accused Hari Dass was posted as Deputy Range Officer-cum-Block Officer Forest who had marked the trees standing on the private land demarcated by Shobha Ram, deceased and accused Joginder Singh had given a certificate that no tree had been marked on Government land and that all the trees stood on the private land for which the applications were filed by the land owners. However, it was found that the permission was accorded in favour of M/s Kali Timber Arhal and accused Bhagat Singh was one of its proprietor, but some trees were

marked from Government land and some from the land which was not demarcated or mentioned in the applications. It was found that against the permit for export of scants numbering 2227, 2355 scants of kail and deodar were transported. He exported 128 scants in excess of the quantity mentioned in the permit. Not only this, two consignments, one of 161 scants and another of 165 scants were exported beyond the date of permit upto 30.5.1982, which were exported on 6.6.1982. Hence, the accused persons were charge sheeted after the challan was filed against them under these provisions.

The prosecution examined 33 witnesses to prove their case. On conclusion of the trial, all the accused persons were acquitted by the learned trial Court.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. Ajay Kochar, Advocate, for respondents No. 1,2 and 4 to 6.

The submissions made by the learned Additional Advocate General, for the appellant/State were that it was established from the evidence led by the prosecution that some of the trees were cut from the Government land whose stumps were found at the spot and some of the trees were also cut from the adjoining land, for which no applications had been submitted by the private land owners. It was submitted that due demarcation was given by the Revenue Officer but the report of the Revenue Officer was wrongly not relied upon by the trial Court. It was also submitted that it had been established that the timber was exported in excess of the export permit and some of the timber was exported after the date of expiry of permit and those findings recorded by the trial Court cannot be said to be correct and call for an interference by this Court.

On the other hand, the learned counsel for the respondents supported the judgment of acquittal recorded by the trial Court by submitting that no proper demarcation was given and on the basis of evidence led by the prosecution, the learned trial Court had rightly acquitted all the accused persons which findings do not call for an interference by this Court.

During the course of hearing, I have been taken by Mr. Ashutosh Burathoki, learned Additional Advocate General, for the State through the reasons recorded by the trial Court and reference has also been made to the statements of the prosecution witnesses examined in this behalf. The learned trial Court had framed four points and out of which first three points can be said to be relevant and since the first three points were not established, the trial Court concluded that the charge of conspiracy under point No. 4 cannot be said to have been proved. I will take up all the three points one by one.

The first point framed by the learned trial Court was as to whether four trees standing on government land bearing Khasra No. 711 had been marked and felled and thirteen trees standing on private land bearing Khasra Numbers 1449/814 and 855 with respect to which no marking and felling permission had been sought and accorded by the forest authority.

Coming to the findings recorded the trial Court under this first point, the learned trial Court had given the reasons for disbelieving the report of the demarcation submitted by PW-15 Jagan Nath, Naib Tehsildar, on whose statement the conclusion in regard to the first point was to be drawn mainly. It was observed by the learned trial Court that four stumps were noticed on the Government land but it was observed

that the Revenue Officer had not followed the procedure prescribed by the Financial Commissioner for carrying out the demarcation. The infirmity in the said report submitted by the Revenue Officer was that he should have recorded the statements of the adjoining private land owners with respect to pucca points before carrying out the demarcation which was not done. The demarcation was required to be made on the basis of the copies of Musabi which was not called by him. He had not fixed the permanent points before carrying out the demarcation. Copy of the report of the Musabi was not attached with the report though he had mentioned that it was attached with the report. Karukans mentioned in the Aks Shajra did not tally with the Karukans in the Aks Shajra submitted by the land owners. The boundary of Khasra No. belonging to 711 were not fixed but only adjoining Khasra Nos. were fixed without fixing permanent points on the basis of the statements made by the land owners. The further observations made in Paras 13 and 14 of the judgment of the trial Court may be reproduced as under:

> "13. For the foregoing reasons, the report Ext. PL cannot be made the basis for holding that stumps were noticed on a portion of government land bearing khasra number 711 or on private land other than the land on which marking and felling had taken place.
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> 14. The above stated position, apart, there is no evidence suggesting that the stumps which were allegedly found on govt. land forming part of khasra number 711 and private land other than the land on which felling and marking had been permitted were of the trees which had been marked by accused Hari Dass, Block Officer, on the

basis of the demarcation given by deceased Shobha Ram. At the time of the marking of the trees, accused Hari Dass must have affixed some particular hammer mark. On the lists, which Hari Dass prepared and which are exhibits PD/645 to PD/76, there appears facsimile impression of a hammer which reads HP-187. So it can legitimately be presumed that the trees were marked by accused Hari Dass with hammer which produced the impression HP-187. Neither PW-5 Jagan Nath nor PW-28 Amar Singh says that the stumps which were spotted by them on the government land or on private land other than the land on which the marking and felling had been permitted bore the impression HP-187. So it cannot be said that the stumps, allegedly found on government land and the private land other than the land on which trees were allowed to be marked and felled, were of the trees that were marked by accused Hari Dass on the basis of demarcation given by Shobha Ram Field Kanungo."

A reference was also made to the statement of PW-28 Amar Singh but in view of the statement of PW-15 Jagan Nath, Naib Tehsildar it was clear that demarcation had not been carried out in accordance with the procedure and no definite findings could be given that four trees were felled from the Government land or 13 trees from the private land for which there were no demarcation and finally no infirmity could be pointed out by the learned Additional Advocate General in the said observation made by the trial Court in view of the statements of two

principal witnesses and as such, there is nothing to show that the findings of the learned trial Court under Point No.1 call for an interference by this Court.

Second and third points framed by the learned trial Court were that whether 326 scants had been transported by Bhagat Singh from Railway Station Dharampur to Yamunanagar after the expiry of permit and it was more than the timber permitted to be exported vide permit. A perusal of statement of PW-23 K.C. Nandwani, a railway employee shows that the validity of the permit is to be seen not at the time of the actual transportation of the goods by the railways, but at the time of the booking of the goods. According to the preliminary inquiry submitted by him, the timber which was transported against railway receipts had been booked and the indents for transporting the timber were placed within the validity period of the export permit. Moreover, he admitted that some of the scants are cut into pieces to avoid uneven loading and that for railways purpose every piece of timber irrespective of its size is treated as a scant. Nothing was concluded from his statement that the timber was exported in excess of the volume in the permit. The possibility that some of the scants of the timber had been cut to facilitate proper loading can not be ruled out and as such, the learned trial Court rightly concluded that both these points were not established. No infirmity was pointed out in the observations made by the learned trial Court or no such facts were brought from the testimony of the statements of any witnesses that these findings are not correct and are not based upon correct appreciation.

In view of the above discussion, I accordingly hold that the learned trial Court had come to a right conclusion on all the points

formulated by it and the findings recorded cannot be said to be incorrect or perverse in any manner calling for an interference from this Court and as such, there is no merit in the appeal filed by the appellant/State of H.P., which is dismissed accordingly. Bail bonds furnished by the respondents are discharged.

(V.K. Ahuja),
Judge

September 21,2007
(BSS)